

CHAPTER 8

SPECIAL TERMINATION AUTHORITY UNDER 10 U.S.C. 1590(e)

A. POLICY

1. Section 1590(e) of Title 10, U.S. Code, provides that the Secretary of Defense may terminate the employment of any civilian intelligence officer or employee of a Military Department whenever he considers that action to be in the interests of the United States and he determines that procedures prescribed in other provisions of law, which authorize the termination of the employment of such officer or employee, cannot be invoked in a manner consistent with the national security.

2. Termination of employment under this authority does not affect the right of the person involved to seek or accept employment with any other Department or Agency of the United States if he/she is declared eligible for such employment by the Office of Personnel Management.

B. RESPONSIBILITIES

1. Secretaries of the Military Departments.

a. The Secretaries of the Departments are delegated the authority to make and effect final decisions to terminate employment under this authority. This authority cannot be redelegate. The Secretaries shall consult with the Department's General Counsel and/or the DoD General Counsel before issuing a decision to terminate employment under this authority. The Military Department Secretary shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, through the ASD (C3I), whenever this termination authority is exercised.

b. Secretaries of the Military Departments shall determine the appropriate delegation of authority within their Departments for proposing termination actions under 10 U.S.C. 1590(e).

2. Secretary of Defense. The Secretary of Defense shall make decisions on appeals filed by employees. This authority cannot be redelegate.

C. PROCEDURES

The Military Departments shall develop procedures for termination and appeal under this authority that shall include at least the following:

1. Basic Procedures. Employees shall be provided the following procedural protections:

a. A written proposal listing the charge(s) or other cause(s) of action, stated as specifically as security and privacy act provisions permit;

b. An opportunity to answer charges within 30 days of receipt of the proposal. Any reply must be in writing and may include affidavits.

c. A written decision by the Secretary of the Military Department;

d. An opportunity of appeal an adverse decision to the Secretary of Defense within 20 calendar days of receipt of the final decision. Appeals shall be in writing, addressed to the Assistant Secretary of Defense (Force Management and Personnel), Room 3D264, Pentagon, Washington D.C. 20301-4000, and contain, at a minimum, the following information:

(1) Name and current mailing address of the appellant;

(2) Copy of the written proposal, the written response, and the written decision letter; and

(3) Statements, affidavits or other information to show why the appeal should be granted. Decisions of the Secretary of Defense are final and may not be appealed or reviewed outside the Department of Defense.

2. Right to Representation. The employee shall have the right to be represented by an attorney or other representative of his/her choice. The employee must name the representative in writing. Representatives shall be restricted from access to pertinent classified information unless they have or are able to obtain required clearance and access within a reasonable period. The Military Departments may disallow as an employee's representative:

a. An individual whose activities as a representative would cause a conflict of interest or position;

b. An individual who cannot be released from official duties because of priority needs of the Government; or

c. An employee whose release would give rise to unreasonable costs to the Government.

3. Employee Status. An employee may be retained in duty status (to include detail) through the final decision stage of the termination action. The employee may, however, also be placed in a non-duty status with pay if such action is considered to be in the best interests of the Military Department.

4. Relationship to Security Clearance. Withdrawal of security access shall not necessarily be a prerequisite for exercising this special termination authority nor shall it be required that withdrawal of access be fully adjudicated prior to proposing termination under this provision.